

### **Remark**

Applicants respectfully request reconsideration of this application as amended. Claims 1, 17, 21, 26, 27 and 29 have been amended. Claims 14, 15, 20, 24 and 30 have been cancelled. Therefore, claims 1-13, 16-19, 21-23 and 25-29 are present for examination.

### **35 U.S.C. §103 Rejection**

#### *Thomas in view of Herz*

The Examiner has rejected claims 1-2, 5, 7, 9-10, 12-13, 17-19 and 27-29 under 35 U.S.C. §103 (a) as being unpatentable by Thomas et al., U.S. Patent Application No. US 2005/0149964 ("Thomas"), in view of Herz et al., U.S. Patent No. 5,758,257 ("Herz").

In the rejection of Claim 8, the Examiner writes, "it would have been obvious... to further modify the monitoring system... for the purpose of providing programming providers with data... in order to efficiently determine what types of application or enhanced programming options to provide to viewers." Without addressing whether this statement is true, Applicants respectfully submit that it reflects a fundamental misunderstanding of the invention.

There is nothing in the claims about providing applications or enhanced programming options to viewers. The references are all about determining what a viewer wants and then providing that to the viewer, preferably without any participation by the actual viewer. The present invention, on the contrary, is about providing ratings based on received viewer feedback.

While Thomas includes its Figure 10a, none of the other references are directed to providing ratings to a viewer from other viewers. In Thomas, the user equipment monitors user behavior in the background, but in Herz, the users are completely isolated from the process and the results of the process are not shared with the users.

Turning to Claim 1, it has been reformatted to make it easier to read. In addition, the viewer characteristics have been further elaborated to add "assembling a list of available broadcasts for the viewer" and "ranking the available broadcasts based on the received viewer characteristics and the cross-referenced ratings." This information is then all provided to the viewer. As stated in paragraph 38 of the specification, the first broadcast on the list is intended to be the most likely broadcast that is of interest to the viewer. Nonetheless, the viewer is still provided with the guide and the ratings information, that has been specifically cross-referenced.

These features in combination are believed to render the claim allowable. All of the claims either directly or by dependence contain such limitations.

### **35 U.S.C. §103 Rejection**

#### *Thomas, Herz and Sahai*

The Examiner has rejected claim 8 under 35 U.S.C. §103 (a) as being unpatentable by Thomas, Herz and in further view of Sahai et al., U.S. Patent No. 6,594,699 ("Sahai"). As mentioned above, the present invention presents a unique and inventive approach to using hardware capabilities information. The claim recites that this is part of the viewer characteristic information. According to claim 1, it is then used in cross-referencing ratings and in ranking available broadcasts.

The Examiner has cited a reference that involves applications or programming enhancements. This does not make very much sense in the current world of TV. As described in the specification, one broadcast may present the show in stereo, while another broadcast may present the same show in surround sound. A user with a stereo system might rank the two programs the same, since surround sound can normally be downmixed to stereo. A user with a surround sound system might rank the surround sound version more highly. This presents an additional aspect of the cross-reference ratings that is not appreciated in the prior art.

### **35 U.S.C. §103 Rejection**

*Thomas, and Herz with McKenna, Logan, Lett, Barrett, and Sahai*

The Examiner has rejected the remaining claims under 35 U.S.C. §103 (a) as being unpatentable over Thomas, Herz and in further view of various combinations with McKenna et al., U.S. Patent No. 4,816,904 (“McKenna”), Logan et al., U.S. Patent No. 6,758,257 (“Logan”), Lett, U.S. Patent No. 5,758,257 (“Lett”), Barrett, U.S. Patent No. 6,005,597 (“Barrett”), and Sahai. This is a large number of references used to invalidate the features of a single invention with so few claims. Nevertheless, the rejections all rely on the Thomas, Herz rejection discussed above and are therefore traversed on the same grounds.

### **Conclusion**

Applicants respectfully submit that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicants respectfully request the rejections be withdrawn and the claims as amended be allowed.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.


### **Request for an Extension of Time**

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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